

A. G. Contract No. KR95 0037TRN  
ECS File: JPA 95-01  
Project No.: STP-GIL-0(4)P  
TRACS No.: SS342 01C  
Section: Elliot & Lindsay Roads  
Gilbert-Burke & Smoke Tree-Elliot

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF GILBERT

THIS AGREEMENT is entered into 2 MARCH, 1995,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
TOWN OF GILBERT, acting by and through its MAYOR and TOWN  
COUNCIL (the "Town").

**I. RECITALS**

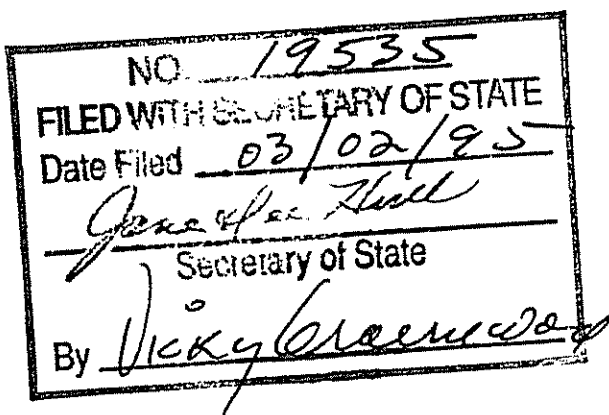
1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The Town is empowered by Arizona Revised Statutes  
Section 48-572 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf  
of the Town.

3. Congress has authorized appropriations for, but not  
limited to, the construction of streets and primary, feeder and  
farm-to-market roads; the replacement of bridges; the  
elimination of roadside obstacles; and the application of  
pavement markings.

4. Such project within the boundary of the Town has been  
selected by the Town; the field survey of the project has been  
completed; and the plans, estimates and specifications have  
been prepared and, as required, submitted to the Federal  
Highway Administration (FHWA) for its approval.

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5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide the State with the Town funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced by this agreement and the estimated cost are as follows: Widen and reconstruct.

Estimated Cost of Elliot SPRR Crossing Work	\$ 315,999.00
Estimated Cost of Lindsay SPRR Crossing Work	\$ 304,847.00
Total Estimated Costs of SPRR Crossing Work	\$ 620,846.00
Federal Aid Funds @ 94.3%	\$ 585,458.00
Town of Gilbert Funds @ 5.7% of	\$ 35,388.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Town, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said contract or in this agreement and will request the maximum federal funds available.

b. The State will furnish Town with a copy of the proposed Project Agreement to be entered into by the State and FHWA. Upon approval of the terms and conditions of the Project Agreement, the agreement shall be incorporated in and made a part of this agreement by reference and shall have the same force and effect as though fully written herein.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Town's deposit unless and until so authorized in writing by the Town.

2. Prior to the solicitation of bids, the Town shall deposit with State funds in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the Town any part of the funds deposited by Town remaining after Town's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

6. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

7. The Town shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

8. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the Town agrees to furnish and provide State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

5. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

Town of Gilbert  
Town Manager  
1025 S. Gilbert Road  
Gilbert, AZ 85234

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF GILBERT

STATE OF ARIZONA

Department of Transportation

By Wilburn J. Brown  
WILBURN J. BROWN  
Mayor

By Peter L. Eno  
PETER L. ENO  
Contract Administrator

ATTEST:

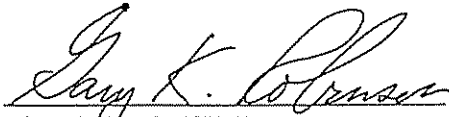
By Phyllis Alberty  
PHYLLIS ALBERTY  
Town Clerk

JPA 95-01

RESOLUTION

BE IT RESOLVED on this 4th day of January 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Town of Gilbert for the purpose of defining responsibilities for construction of improvements to Elliot Road and Lindsay Road in the Town.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

  
OK: LARRY S. BONINE  
Director

MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING, TUESDAY,  
JANUARY 31, 1995, 7:00 P.M., 1025 S. GILBERT ROAD, GILBERT,  
ARIZONA

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COUNCIL PRESENT: Mayor Brown, Vice Mayor Abbott,  
Councilmembers Byrd-Baldwin,  
Long, McDonald, Morrison and Stevens

COUNCIL ABSENT: None.

STAFF PRESENT: Manager Cooper, Assistant Manager Pettit,  
Clerk Alberty, Attorney Goodwin, Planning  
Director Anderson, Police Chief Dees, Fire  
Chief Garcilaso, Library Director  
Castaneda, Building/Code Director Patten,  
Parks Director Ahlman, Lieutenants Turner  
and Young

OTHERS PRESENT: Kathy Bareiss, Gilbert Tribune; Jennifer  
Cushman, Gilbert Independent; Cynthia  
Donald

CALL TO ORDER:

Mayor Brown called the meeting to order at 7:03 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor E.J. Elliott of Victory Tabernacle Church gave the  
Invocation and led the Pledge of Allegiance.

ROLL CALL

Clerk Alberty called the roll and declared that a quorum was  
present. Vice Mayor Abbott and Councilmember Stevens arrived  
later in the evening.

PRESENTATIONS AND PROCLAMATIONS

Report on Police Department grants, proposed budget for 1995-96,  
and department forecast.

Police Chief Dees gave an update on grants the department  
currently has in force, and discussed some state-funded grants  
that sound good, but for which there is little information as  
yet on applying. He also noted some crime bill grants for which  
the Town is applying. In discussing the budget, Chief Dees said  
the first priority is to provide basic police service,  
indicating that a rise in population puts a strain on service  
levels. Chief Dees remarked that if there is any extra money in  
the budget, after improving basic service levels, the following  
are items to consider: transportation of prisoners; computers  
in squad cars; joint venture with the school and SRP on

Regular Council Meeting  
January 31, 1995  
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Mike Huso and Maureen Koerner reappointed to the Industrial Development Authority, said terms to expire March 12, 2001.

This item was approved with the Consent Calendar above.

- \*12. Intergovernmental Agreement - consider IGA with Arizona Department of Transportation to improve the Elliot and Lindsay Road railroad crossing.

This item was approved with the Consent Calendar above.

- \*13. Map of Abandonment - consider a Resolution of Abandonment of West San Angelo Street between the Southern Pacific Railroad tracks and Fiesta Blvd.

This item was approved with the Consent Calendar above. Resolution No. 1519 was adopted.

- \*14. Final Plat - consider approval of the final plat for Gilbert Tech Center, located at the southeast corner of North Fiesta Blvd., and West San Angelo Drive.

This item was approved with the Consent Calendar above.

- \*15. Final Plat - consider approval of the final plat for Country Estates Unit I and II, located at the northeast corner of Ray and Cooper Roads.

This item was approved with the Consent Calendar above.

- \*16. Zoning/Subdivision Codes - consider authorizing a contract with County Planning Services to rewrite the zoning and subdivision codes.

This item was approved with the Consent Calendar above.

- \*17. Contract Addendum - consider addendum to contract with Jones and Stokes Associates for Phase II of the Urban Wildlife Habitat.

This item was approved with the Consent Calendar above.

- \*18. Request to Bid - consider staff request to bid for 2 automated side-loading refuse trucks.

This item was approved with the Consent Calendar above.

- \*19. Minutes - consider approval of Council's regular meeting of January 17, 1995.

This item was approved with the Consent Calendar above.

- \*20. Departmental Activity Reports - consider approval of Departmental Activity Reports for December, 1994.



Wilburn J. Brown  
Wilburn J. Brown, Mayor

ATTEST:

Phyllis J. Alberty  
Phyllis J. Alberty, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Gilbert held on the 31st day of January. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 16th day of February, 1995.

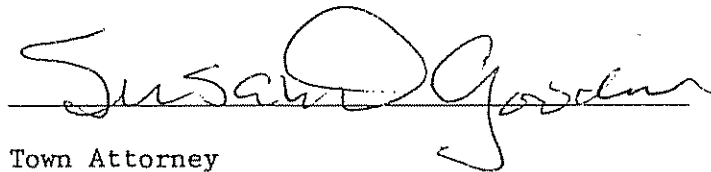
Phyllis J. Alberty  
Phyllis J. Alberty, Town Clerk

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APPROVAL OF THE GILBERT TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF GILBERT and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 30 day of January, 1995.

  
Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR95-0037-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 22<sup>nd</sup> day of February, 1995.

GRANT WOODS  
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
8737G/47